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SENATE BILL 724

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Leonard Lee Rawson

AN ACT

**RELATING TO PUBLIC INVESTMENTS; CODIFYING A STANDARD ENSURING
ACTUARIAL SOUNDNESS OF INVESTMENTS IN THE PUBLIC LIABILITY,
WORKERS' COMPENSATION RETENTION, PUBLIC PROPERTY RESERVE AND
UNEMPLOYMENT COMPENSATION FUNDS; AMENDING SECTIONS OF THE NMSA
1978.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 13-5-1 NMSA 1978 (being Laws 1981,
Chapter 101, Section 1, as amended) is amended to read:**

**"13-5-1. STATE AGENCY PUBLIC PROPERTY--INSURANCE--
RESERVES FOR LOSSES OF STATE AGENCIES--PUBLIC PROPERTY RESERVE
FUND CREATED.--**

**A. The risk management division of the general
services department shall purchase a blanket insurance policy
for public buildings of state agencies against loss or damage**

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1 by fire, windstorm, hail, smoke, explosion, riot or civil
2 commotion. The risk management division may provide coverage
3 to covered educational entities under the public property
4 reserve fund through blanket or individual policies. The risk
5 management division shall create a reserve for the uninsured
6 value of any such public building and for the uninsured loss or
7 damage to any such building by flood, subject to any deductible
8 that the risk management advisory board determines shall be
9 borne by individual state agencies or covered educational
10 entities.

11 B. Subject to any deductible to be borne by
12 individual state agencies or covered educational entities, the
13 risk management division of the general services department may
14 purchase insurance, establish prudent reserves or provide a
15 combination of insurance and reserves to cover, in any amount
16 not to exceed replacement cost:

17 (1) buildings of state agencies or covered
18 educational entities destroyed or damaged by any peril other
19 than a peril set forth in Subsection A of this section;

20 (2) personal property that is destroyed or
21 damaged by any peril; or

22 (3) personal property that is stolen.

23 C. Any insurance purchased pursuant to Subsections
24 A and B of this section may be purchased with such deductible
25 provisions as may be deemed desirable by the risk management

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1 advisory board.

2 D. The director of the risk management division of
3 the general services department shall include in his annual
4 report to the legislature an inventory of all public buildings
5 insured by the division, the estimated total value of the
6 buildings, the total insured value of the buildings and the
7 amount of any deductible or maximum loss provisions in the
8 current insurance policy covering the buildings.

9 E. There is created in the state treasury the
10 "public property reserve fund". The fund shall consist of
11 assessments of state agencies and covered educational entities
12 deposited in the fund, money appropriated to the fund, income
13 earned by the fund and money received as proceeds of insurance
14 purchased pursuant to this section. The fund may be used to:

15 (1) purchase property insurance;
16 (2) pay any claim covered by a certificate of
17 coverage issued by the director of the risk management division
18 of the general services department; provided such claims shall
19 only be paid to the extent of actual expenses that have been or
20 will be incurred to repair, reconstruct and replace covered
21 property;

22 (3) pay the cost of repair, reconstruction and
23 replacement of property and expense incidental thereto arising
24 from damage or destruction covered pursuant to this section;

25 (4) enter into consulting and other contracts

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1 as may be necessary or desirable in carrying out the provisions
2 of this section; and

3 (5) pay costs and expenses incurred in
4 carrying out the provisions of this section.

5 F. The fund shall be maintained with adequate
6 reserves and in actuarially sound condition as evidenced by the
7 annual written certification of an independent and qualified
8 actuary.

9 [~~F.~~] G. The director of the legislative council
10 service may elect to cover all or any part of public buildings
11 or property under his jurisdiction through the public property
12 reserve fund by giving written notice of such election to the
13 director of the risk management division of the general
14 services department and paying assessments that the director of
15 the risk management division prescribes.

16 [~~G.~~] H. For purposes of this section, "state
17 agency" means the state or any of its branches, agencies,
18 departments, boards, instrumentalities or institutions.

19 [~~H.~~] I. For the purposes of this section, "covered
20 educational entities" means school districts as defined in
21 Section 22-1-2 NMSA 1978 and educational institutions
22 established pursuant to Chapter 21, Articles 13, 16 and 17 NMSA
23 1978 that request and are granted coverage from the risk
24 management division of the general services department, if the
25 coverage is commercially unavailable; except that coverage

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1 shall be provided to a school district only through the public
2 school insurance authority or its successor unless the district
3 has been granted a waiver by the authority or the authority is
4 not offering the coverage for the fiscal year for which the
5 division offers its coverage. A local school district to which
6 the division may provide coverage may provide for marketing and
7 servicing to be done by licensed insurance agents who shall
8 receive reasonable compensation for their services. "

9 Section 2. Section 15-7-6 NMSA 1978 (being Laws 1977,
10 Chapter 385, Section 9, as amended) is amended to read:

11 "15-7-6. WORKERS' COMPENSATION RETENTION FUND. --

12 A. There is created in the state treasury the
13 "workers' compensation retention fund".

14 B. The fund shall be maintained with adequate
15 reserves and in actuarially sound condition as evidence by the
16 annual written certification of an independent and qualified
17 actuary.

18 [~~B.~~] C. Money deposited in, earned by or
19 appropriated to the workers' compensation retention fund may be
20 used by the director to:

- 21 (1) purchase workers' compensation insurance;
22 (2) establish appropriate reserves to provide
23 workers' compensation coverage for employees of state agencies
24 or employees of covered educational entities;
25 (3) pay workers' compensation claims in

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1 accordance with the Workers' Compensation Act;

2 (4) enter into consulting and other contracts
3 as may be necessary or desirable in carrying out the provisions
4 of this section; and

5 (5) pay costs or expenses incurred in carrying
6 out the provisions of this section.

7 [~~E-~~] D. For the purposes of this section, "covered
8 educational entities" means school districts as defined in
9 Section 22-1-2 NMSA 1978 and educational institutions
10 established pursuant to Chapter 21, Articles 13, 16 and 17 NMSA
11 1978 that request and are granted coverage from the risk
12 management division of the general services department, if the
13 coverage is commercially unavailable; except that coverage
14 shall be provided to a school district only through the public
15 school insurance authority or its successor unless the district
16 has been granted a waiver by the authority or the authority is
17 not offering the coverage for the fiscal year for which the
18 division offers its coverage. A local school district to which
19 the division may provide coverage may provide for marketing and
20 servicing to be done by licensed insurance agents who shall
21 receive reasonable compensation for their services. "

22 Section 3. Section 41-4-23 NMSA 1978 (being Laws 1977,
23 Chapter 386, Section 17, as amended) is amended to read:

24 "41-4-23. PUBLIC LIABILITY FUND CREATED--PURPOSES.--

25 A. There is created the "public liability fund".

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1 The fund and any income from the fund shall be held in trust,
2 deposited in a segregated account and invested by the general
3 services department with the prior approval of the state board
4 of finance.

5 B. The fund shall be maintained with adequate
6 reserves and in actuarially sound condition as evidenced by the
7 annual written certification of an independent and qualified
8 actuary.

9 ~~[B.]~~ C. Money deposited in the public liability
10 fund may be expended by the risk management division of the
11 general services department:

12 (1) to purchase tort liability insurance for
13 state agencies and their employees and for any local public
14 body participating in the public liability fund and its
15 employees;

16 (2) to contract with one or more consulting or
17 claims adjusting firms pursuant to the provisions of Section
18 41-4-24 NMSA 1978;

19 (3) to defend, save harmless and indemnify any
20 state agency or employee of a state agency or a local public
21 body or an employee of such local public body for any claim or
22 liability covered by a valid and current certificate of
23 coverage to the limits of such certificate of coverage;

24 (4) to pay claims and judgments covered by a
25 certificate of coverage;

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1 (5) to contract with one or more attorneys or
2 law firms on a per-hour basis, or with the attorney general, to
3 defend tort liability claims against governmental entities and
4 public employees acting within the scope of their duties;

5 (6) to pay costs and expenses incurred in
6 carrying out the provisions of this section;

7 (7) to create a retention fund for any risk
8 covered by a certificate of coverage;

9 (8) to insure or provide certificates of
10 coverage to school bus contractors and their employees,
11 notwithstanding the provisions of Subsection F of Section
12 41-4-3 NMSA 1978, for any comparable risk for which immunity
13 has been waived for public employees pursuant to Section 41-4-5
14 NMSA 1978, if the coverage is commercially unavailable; except
15 that coverage for exposure created by Sections 41-4-9, 41-4-10
16 and 41-4-12 NMSA 1978 shall be provided to its member public
17 school districts and participating other educational entities
18 of the public school insurance authority, by the authority, and
19 except that coverage shall be provided to a contractor and his
20 employees only through the public school insurance authority or
21 its successor, unless the district to which the contractor
22 provides services has been granted a waiver by the authority or
23 the authority is not offering the coverage for the fiscal year
24 for which the division offers its coverage. A local school
25 district to which the division may provide coverage may provide

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1 for marketing and servicing to be done by licensed insurance
2 agents who shall receive reasonable compensation for their
3 services; and

4 (9) to insure or provide certificates of
5 coverage for any ancillary coverage typically found in
6 commercially available liability policies provided to
7 governmental entities, if the coverage is commercially
8 unavailable.

9 [~~C.~~] D. No settlement of any claim covered by the
10 public liability fund in excess of twenty-five thousand dollars
11 (\$25,000) shall be made unless the settlement has first been
12 approved in writing by the director of the risk management
13 division of the general services department. This subsection
14 shall not be construed to limit the authority of an insurance
15 carrier, covering any liability under the Tort Claims Act, to
16 compromise, adjust and settle claims against governmental
17 entities or their public employees.

18 [~~D.~~] E. Claims against the public liability fund
19 shall be made in accordance with rules or regulations of the
20 director of the risk management division of the general
21 services department. If the director of the risk management
22 division has reason to believe that the fund would be exhausted
23 by payment of all claims allowed during a particular state
24 fiscal year, pursuant to regulations of the risk management
25 division, the amounts paid to each claimant and other parties

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1 obtaining judgments shall be prorated, with each party
2 receiving an amount equal to the percentage his own payment
3 bears to the total of claims or judgments outstanding and
4 payable from the fund. Any amounts due and unpaid as a result
5 of such proration shall be paid in the following fiscal years."

6 Section 4. Section 51-1-19 NMSA 1978 (being Laws 1936
7 (S.S.), Chapter 1, Section 9, as amended) is amended to read:

8 "51-1-19. UNEMPLOYMENT COMPENSATION FUND. --

9 A. There is hereby established as a special fund,
10 separate and apart from all public money, or funds of this
11 state, an "unemployment compensation fund", which shall be
12 administered by the department exclusively for the purposes of
13 this section. The fund shall consist of:

14 (1) all contributions collected and payments
15 in lieu of contributions collected or due pursuant to the
16 Unemployment Compensation Law;

17 (2) interest earned upon any money in the
18 fund;

19 (3) any property or securities acquired
20 through the use of money belonging to the fund;

21 (4) all earnings of such property or
22 securities;

23 (5) all money received from the federal
24 unemployment account in the unemployment trust fund in
25 accordance with Title 12 of the Social Security Act, as

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1 amended;

2 (6) all money credited to this state's account
3 in the unemployment trust fund pursuant to Section 903 of the
4 Social Security Act, as amended;

5 (7) all money received or due from the federal
6 government as reimbursements pursuant to Section 204 of the
7 Federal-State Extended Unemployment Compensation Act of 1970;
8 and

9 (8) all money received for the fund from any
10 other source. All money in the fund shall be mingled and
11 undivided.

12 B. The fund shall be maintained with adequate
13 reserves and in actuarially sound condition as evidenced by the
14 annual written certification of an independent and qualified
15 actuary.

16 [~~B.~~] C. The state treasurer shall be the treasurer
17 and custodian of the fund and shall administer such fund in
18 accordance with the directions of the department and shall
19 issue his checks upon it in accordance with such regulations as
20 the secretary may prescribe. He shall maintain, within the
21 fund, three separate accounts:

- 22 (1) a clearing account;
23 (2) an unemployment trust fund account; and
24 (3) a benefit account.

25 [~~C.~~] D. All money payable to the fund upon receipt

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1 thereof by the department shall be forwarded to the treasurer,
2 who shall immediately deposit it in the clearing account.
3 Refunds payable pursuant to Sections 51-1-36 and 51-1-42 NMSA
4 1978 shall be paid from the clearing account or the benefit
5 account upon checks issued by the treasurer under the direction
6 of the department. After clearance thereof, all money in the
7 clearing account, except as herein otherwise provided, shall be
8 immediately deposited with the secretary of the treasury of the
9 United States to the credit of the account of this state in the
10 unemployment trust fund, established and maintained pursuant to
11 Section 904 of the act of congress known as the Social Security
12 Act, as amended (42 U.S.C. Section 1104), any provisions of law
13 in this state relating to the deposits, administration, release
14 or disbursements of money in the possession or custody of this
15 state to the contrary notwithstanding. The benefit account
16 shall consist of all money requisitioned from this state's
17 account in the unemployment trust fund. Except as herein
18 otherwise provided, money in the clearing and benefit accounts
19 may be deposited by the treasurer, under the direction of the
20 secretary, in any bank or public depository in which general
21 funds of the state may be deposited, but no public deposit
22 insurance charge or premium shall be paid out of the fund.
23 Money in the clearing and benefit accounts shall not be
24 commingled with other state funds but shall be maintained in
25 separate accounts on the books of the depository.

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1 ~~[D-]~~ E. All of the money not deposited in the
2 treasury of the United States shall be subject to the general
3 laws applicable to the deposit of public money in the state;
4 and collateral pledged for this purpose shall be kept separate
5 and distinct from any collateral pledged to secure other funds
6 of this state.

7 ~~[E-]~~ F. The state treasurer shall be liable on his
8 official bond for the faithful performance of his duties in
9 connection with the unemployment compensation fund provided for
10 under this section. The liability on the official bond of the
11 state treasurer shall be effective immediately upon the
12 enactment of this provision, and such liability shall exist in
13 addition to the liability of any separate bond existent on the
14 effective date of this provision or that may be given in the
15 future. All sums recovered for losses sustained by the fund
16 shall be deposited therein.

17 ~~[F-]~~ G. All money in the clearing account
18 established under this section is hereby appropriated for the
19 purpose of making refunds pursuant to Sections 51-1-36 and
20 51-1-42 NMSA 1978, and all money in the clearing account not
21 needed for the purpose of making the refunds shall be
22 immediately paid to the secretary of the treasury of the United
23 States to the credit of the account of this state in the
24 unemployment trust fund, and the money in the unemployment
25 trust fund is hereby appropriated for the purposes of this

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1 section.

2 [G-] H. Money shall be requisitioned from this
3 state's account in the unemployment trust fund solely for the
4 payment of benefits and for the payment of refunds pursuant to
5 Sections 51-1-36 and 51-1-42 NMSA 1978 in accordance with
6 regulations prescribed by the secretary, except that money
7 credited to this state's account pursuant to Section 903 of the
8 Social Security Act, as amended, shall be used exclusively as
9 provided in Subsection [H] I of this section. The secretary
10 shall, from time to time, requisition from the unemployment
11 trust fund such amounts not exceeding the amounts standing to
12 this state's account therein, as he deems necessary for the
13 payment of such benefits and refunds for a reasonable future
14 period. Upon receipt thereof, the treasurer shall deposit such
15 money in the benefit account and shall issue his checks for the
16 payment of benefits solely from such benefit account.

17 Expenditures of such money in the benefit account and refunds
18 from the benefit account or the clearing account shall not be
19 subject to any provisions of law requiring specific
20 appropriations or other formal release by state officers of
21 money in their custody. All money shall be withdrawn from the
22 fund only upon a warrant issued by the department or its duly
23 authorized agent upon the treasurer, and the treasurer upon
24 receipt of such warrants shall issue his check against the fund
25 in accordance with the warrant of the secretary. Any balance

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1 of money requisitioned from the unemployment trust fund that
2 remains unclaimed or unpaid in the benefit account after the
3 expiration of the period for which such sums were requisitioned
4 shall either be deducted from estimates for, and may be
5 utilized for, the payment of benefits and refunds during
6 succeeding periods, or in the discretion of the secretary,
7 shall be redeposited with the secretary of the treasury of the
8 United States, to the credit of this state's account in the
9 unemployment trust fund, as provided in Subsection [E] D of
10 this section. All money in the benefit account provided for
11 hereinabove is hereby appropriated for the payment of benefits
12 and refunds as provided herein.

13 ~~[H.]~~ I. Money credited to the account of this state
14 in the unemployment trust fund by the secretary of the treasury
15 of the United States pursuant to Section 903 of the Social
16 Security Act may be requisitioned from this state's account or
17 used only for:

- 18 (1) the payment of benefits pursuant to
19 Subsection [G] H of this section; and
20 (2) the payment of expenses incurred for the
21 administration of the Unemployment Compensation Law and the
22 federal Wagner-Peyser Act; provided that any money
23 requisitioned and used for the payment of expenses incurred for
24 the administration of the Unemployment Compensation Law and the
25 federal Wagner-Peyser Act must be authorized by the enactment

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1 of a specific appropriation by the legislature that:

2 (a) specifies the purpose for which such
3 money is appropriated and the amounts appropriated therefor;

4 (b) limits the period within which such
5 money may be obligated to a period ending not more than two
6 years after the date of the enactment of the appropriation law,
7 except for amounts distributed to the state of New Mexico on
8 March 13, 2002 pursuant to Section 209 of the federal Temporary
9 Extended Unemployment Compensation Act of 2002;

10 (c) limits the amount that may be
11 obligated to an amount which does not exceed the amount by
12 which 1) the aggregate of the amounts credited to the account
13 of this state pursuant to Section 903 of the Social Security
14 Act exceeds 2) the aggregate of the amounts used by the state
15 pursuant to this subsection and charged against the amounts
16 transferred to the account of this state; and

17 (d) notwithstanding the provisions of
18 Paragraph (1) of this subsection, money credited with respect
19 to federal fiscal years 1999, 2000 and 2001 shall be used only
20 for the administration of the Unemployment Compensation Law.

21 [~~F.~~] J. Amounts credited to this state's account in
22 the unemployment trust fund under Section 903 of the Social
23 Security Act that are obligated for administration shall be
24 charged against transferred amounts at the exact time the
25 obligation is entered into. The appropriation, obligation and

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1 expenditure or other disposition of money appropriated under
2 Subsection [~~H~~] I of this section shall be accounted for in
3 accordance with standards established by the United States
4 secretary of labor.

5 [~~J~~] K. Money appropriated under Subsection [~~H~~] I
6 of this section for payment of expenses of administration shall
7 be requisitioned as needed for payment of the obligations
8 incurred under such appropriations and, upon requisition, shall
9 be deposited in the unemployment compensation administration
10 fund but, until expended, shall remain a part of the
11 unemployment compensation fund for use only in accordance with
12 the conditions specified in Subsection [~~H~~] I of this section,
13 notwithstanding any provision of Section 51-1-34 NMSA 1978.
14 Any money so deposited that will not be expended shall be
15 returned promptly to the account of the state in the
16 unemployment trust fund.

17 [~~K~~] L. The provisions of Subsections A through [~~J~~]
18 K of this section to the extent that they relate to the
19 unemployment trust fund, shall be operative only so long as
20 such unemployment trust fund continues to exist and so long as
21 the secretary of the treasury of the United States continues to
22 maintain for this state a separate book account of all funds
23 deposited therein by the state for benefit purposes, together
24 with this state's proportionate share of the earnings of such
25 unemployment trust fund from which no other state is permitted

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1 to make withdrawals. If and when such unemployment trust fund
2 ceases to exist, or such separate book account is no longer
3 maintained, all money, properties or securities therein
4 belonging to the unemployment compensation fund of this state
5 shall be transferred to the treasurer of the unemployment
6 compensation fund, who shall hold, invest, transfer, sell,
7 deposit and release such money, properties or securities in a
8 manner approved by the secretary, in accordance with the
9 provisions of this section; provided that such money shall be
10 invested in the following readily marketable classes of
11 securities; bonds or other interest-bearing obligations of the
12 United States and of the state; and provided further that such
13 investment shall at all times be so made that all the assets of
14 the fund shall always be readily convertible into cash when
15 needed for the payment of benefits. The treasurer shall
16 dispose of securities or other properties belonging to the
17 unemployment compensation fund only under the direction of the
18 secretary. "